IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 13998 OF 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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JUNAGADH MUNICIPALITY - Petitioner(s)
Versus
TOPANLAL CHANDIRAM - Respondent(s)

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Appearance :
Shri M. N. Devnani for Petitioner(s).
Ms. Sejal K. Mandavia for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/07/2007

ORAL JUDGMENT

The petitioner, being aggrieved by the award dated 11th October, 1993 passed by the learned Labour Court, Junagadh in

Reference (LCJ) No.72 of 1990 [Old Reference (LCR) No.307 of 1983], is before this Court with a submission that the learned Court below could not make the award in favour of the respondent-workman.

2. Placing reliance upon a judgement of the Supreme Court in the matter of ***The Range Forest Officer vs. S. T. Hadimani***, [***JT 2002 (2) SC 238***], it is contended that the basic burden to prove that the workman had worked for 240 or more days in twelve calendar months preceding the illegal retrenchment being on the workman and in the present case, he having not discharged the burden, the learned Court below could not make the award in favour of the workman.

3. After going through the said judgement, the learned Counsel for the respondent submitted that prior to the judgement in the matter of ***The Range Forest Officer vs. S.T. Hadimani*** (*supra*), the learned Labour Courts were drawing an adverse inference against the employer for non-production of the documents. Therefore, being in parity with the earlier practice, the workman did not summon the records. It is, however, submitted that to do complete justice between the parties, the matter be remanded to the learned Labour Court with liberty in favour of the workman to summon the records and prove its case.

I immediately agree with the submissions made by the

learned Counsel for the respondent.

4. In view of the judgement of the Supreme Court in the matter of ***The Range Forest Officer vs. S. T. Hadimani*** (*supra*), the award made by the learned Labour Court is hereby set aside/quashed and the matter is remitted to the learned Labour Court, Junagadh with a direction that on appearance of the parties , it shall proceed to decide the matter afresh. If the respondent-workman makes an application to summon the service records/muster rolls to prove his case, then, the learned Court below shall allow such application and direct the present petitioner/Establishment – Employer to produce the records. Despite directions from the learned Labour Court if the records are not produced, then, depending upon the genuineness/justification of the reason for non-production, the learned Court would be free to draw adverse inference against the employer.

The present petitioner/employer would also be entitled to lead further evidence in support of its case. After giving appropriate opportunity to lead further evidence and hearing, to the parties, the learned Labour Court below shall decide the matter afresh in accordance with law. The parties present in this Court shall appear before the learned Labour Court on 29th August, 2007. It shall be the duty of the

parties to file a copy of this order before the said Court, enabling it to know as to what it is required to do. The learned Labour Court shall be obliged to decide the matter finally within a period of six months from the date of appearance of the parties.

5. The petition to the extent indicated above is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

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